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IN THE

Supreme Court of the United States

October Term, 1949
No. 779

HUNTINGTON PALISADES PROPERTY OWNERS CORPORATION, LTD.,

Petitioner,

vs.

METROPOLITAN FINANCE CORPORATION OF CALIFORNIA,

Respondent.

Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth District.

Printed Opinion Below.

The opinion of the United States Court of Appeals for the Ninth Circuit was entered February 7, 1950, and is printed in 180 F. 2d 132.

Statement of the Case.

Jurisdiction by the United States District Court was acquired by reason of diversity of citizenship of the parties. [R. 2.] The complaint alleged ownership by the plaintiff in certain real property subject to restrictions of record. Plaintiff alleged that a controversy existed to the interpretation of the restrictions concerning cost and square footage of construction and prayed for declaratory relief. [R. 2.] Defendant filed an answer [R. 21] and an amended cross-complaint. [R. 24.] The amended cross-complaint was considered as a compulsory counterclaim by the U. S. Court of Appeals. [R. 123.] The issues presented were whether the defendants as reversioners, could commute a restriction calling for a dollar value building limitation into a square footage limitation in excess of that contained in the original restrictive deed. Upon motion for summary judgment the District Court held that the restrictive deed could not be so commuted and granted judgment on the motion. [R. 107.]

THE PLAINTIFF FOR THE WRIT DISCLOSES NO GROUNDS SUFFICIENT FOR THE GRANTING THEREOF.

I.

The Decision Is Not in Conflict With Decisions of Other Circuits of the Supreme Court.

The question raised in the courts below was one solely of the interpretation of a private covenant in which no Federal question or Federal law was presented. The rules of this Honorable Court specify that a writ of certiorari is not a matter of right and will be granted only where there are special and important reasons therefor. (Rev. rules of the Supreme Court of the U. S. No. 38, paragraph 5.) It is petitioner's contention that the writ should be granted because the decision of the U. S. Court of Appeals is in conflict with certain cases decided by this Honorable Court, and that the decision of the U. S. Court of Appeals is such a departure from the accepted and usual course of judicial procedure to call for supervision by this Honorable Court. The petitioner contends that it should have been permitted to support the allegations of its answer and cross-complaint (compulsory counterclaim) by evidence oral and documentary upon a trial of the matter. It is petitioner's contention that the allegations in its answer and cross-complaint were sufficient to raise a good defense and that the same could be substantiated by testimony. The U. S. Court of Appeals considered the affidavits and exhibits submitted on the motion for summary judgment and determined that the allegations of the pleadings were not a sufficient defense to the contentions and held that no amount of testimony could change the legal conclusions to be drawn from the documents presented on the motion and that the issue was one of law to

be determined by the Court. Where no genuine issue as to any material fact is presented or raised upon the motion for summary judgment the granting of the motion is proper.

Sartor v. Arkansas Natural Gas Corporation, 321 U. S. 620, 627; 88 L. Ed. 967; 64 S. Ct. 724;

Associated Press v. The United States, 326 U. S. 1, at 6; 89 L. Ed. 2013; 65 S. Ct. 1416;

Kennedy v. Silas Mason Co., 334 U. S. 249; 92 L. Ed. 1347; 68 S. Ct. 1031;

New York State Guernsey Breeders' Co-op., Inc., v. Wickard, 141 Fed. 2d 805.

The petitioner has cited no case in which this Honorable Court or any other Court has held that when issues of law only were presented that a motion for summary judgment should be denied. Petitioner has not alluded to any facts alleged in its pleadings or set forth in any affidavit which was controverted. Therefore, all matters of fact presented on the motion must be taken as true. The holding of the court was to the effect that such allegations and facts alleged did not constitute a defense. Petitioner is therefore arguing that it should be allowed to introduce evidence in support of admitted facts even though such facts do not entitle petitioner to relief. Under no theory of law would petitioner be entitled to submit evidence of matters which did not constitute a defense to the relief prayed for by the plaintiff.

The granting of the motion was therefore consistent with the provisions of Federal Rules of Civil Procedure, Section 56 and the decisions of this Honorable Court and other Federal Courts interpretative thereof.

II.

The Decision Is a Correct Interpretation of Local Law.

Where the decision of the court below is based upon the application of local law, the Supreme Court will not set aside such ruling except on a plain showing of error.

Palmer v. Hauffman, 318 U. S. 109; 87 L. Ed. 645; 63 S. Ct. 477.

The issue presented in this case was the interpretation of a restrictive covenant upon land which must be determined by the law of its *situs.*

Webster v. Cooper, 14 How. 488; 14 L. Ed. 510;

Carpenter v. Strange, 141 U. S. 87; 35 L. Ed. 640; 11 S. Ct. 960.

The effect of the covenant between the parties was interpreted by the court below through the guidance and application of decisions of the California courts. The petitioner has not argued that the decision was contrary to the State law nor has the petitioner pointed out any error in the reasoning of the decision of the Court of Appeals. It is manifest, therefore, that the petition has not set forth any matters which would be sufficient to justify this Honorable Court issuing the writ prayed for.

It is respectfully submitted, that the petition for the writ of certiorari should be denied.

HENRY SCHAEFER, JR.,
RAYMOND V. HAUN,
By HENRY SCHAEFER, JR.
Attorneys for Respondent.